IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2734 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHANDRAKALABEN R MEHTA & 1 - Petitioner(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR DHIRENDRA MEHTA for Petitioner(s) : 1 - 2.
MR L B DABHI LD APP for Respondent(s) : 1,
MR PV HATHI for Respondent(s) : 2,
RULE SERVED BY DS for Respondent(s) : 3,
MR YOGESH S LAKHANI for Respondent(s) : 4,
MR CH SHAH for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 12/01/2006

ORAL JUDGMENT

1. The petitioners have filed this petition under Article 226 of the Constitution of India seeking declaration from this court that the action of the respondent nos. 3 and 4, of appointing the persons from outside, who are not on the select list dated 15.07.1991, is bad in law, illegal, unjust and improper. The petitioners have further prayed for declaration that the petitioners were entitled to be appointed on regular basis on the posts of teacher in Vidya-vihar (Primary Section) School on and from the date of the first two orders issued in favor of the outsiders, who were irregularly appointed by the respondent school, ignoring the select list dated 15.7.1991, which ought to have been operated and also seeking declaration that the petitioner are entitled to all the

consequential benefits, as if they were appointed on the date on which the outsiders were appointed. The petitioners have also prayed for the direction to the respondent nos. 3 and 4 not to cancel in any manner the select list dated 15.07.1991 and accordingly appoint the petitioners on the posts of teacher. By way of an interim relief, the petitioners have prayed for an injunction restraining the respondent nos.3 and 4, from filling up the vacant posts of teacher in the respondent school, by making appointments of any of the outsiders, with a direction to fill up the said posts strictly by the candidates inclusive of the petitioners, as shown in the select list dated 15.7.1991 and also direction to continue implementation and operation of the select list dated 15.07.1991 during the pendency and hearing and final disposal of this petition.

2. This court has issued rule and ad-interim relief was granted in terms of Para:-12 (e) to the respondent nos. 3 and 4 and the said interim relief was continued from time to time. This Court has passed an order on 1st August, 1994 wherein it is observed that a letter dated 16.07.1992 showing that the the selection process in question has been cancelled and the consequently the letter dated 15.07.1991 issued by the District Primary Education Officer was also cancelled requiring the institution to undertake a fresh selection process. The court has also recorded that the Joint Secretary of the institution was present and he made a statement that as per the direction contained in letter dated 16.07.92, fresh selection process will be held in accordance with law and if the petitioners apply, their case would be considered in accordance with law.

3. Subsequent to the aforesaid order passed by the respondent no.2, an affidavit was filed by the petitioner wherein it is stated that the respondent no.1 has no authority to issue such letter after being served with the notice and stay order issued in this petition by this Court. It is further stated that the petitioners' appointments were regularly made and there was no illegality and hence the said select list should not have been cancelled.

4. Heard Mr.Mehta learned advocate appearing for the petitioner and Ms.Bhavika Kotecha for Mr.Yogesh Lakhani appearing for respondent nos.3 and 4 and Mr.L.B.Dabhi, Ld.APP for respondent no.1 Ms.Kotecha has submitted that since the petition filed before this Court is pending, no further proceedings were initiated and no fresh appointment or selection was made by the institution. Since

the petition is of 1992 and more than 13 years have been passed, because of the pendency of this petition, the fresh selection process could not be undertaken by the institution. The order passed by the District Primary Education Officer passed on 16.09.1992 is very clear. Pursuant to the said order fresh selection was required to be undertaken. Since entire select list was cancelled the petitioner cannot claim any right to be continued in the respondent institute. By virtue of order dated 1st August, 1992 and by virtue of statement made on behalf of respondent institute the petitioners can apply and their case would be considered in accordance with law.

5. Accordingly, without going into merits of the matter, the respondents are directed to undertake fresh selection for appointment of teacher as envisaged in 10.07.1992 and in

that case the petitioners may also apply if they so desire and their case would be considered in accordance with law.

6. Subject to the aforesaid direction, the petition is disposed of. Rule is discharged without any order as to cost. Interim relief stands vacated.

(K.A.PUJ, J.)

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